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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/997,758

11/30/2001

Wendy M. Joyner

ROCB-1-1001

6031

25315

7590

10/23/2002

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EXAMINER

CHOI, JACOB Y

ART UNIT

PAPER NUMBER

2875

DATE MAILED: 10/23/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/997,758

Applicant(s)

JOYNER, WENDY M.

Examiner

Jacob Y Choi

Art Unit

2875

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description: 2 & 39. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "greater than about" in claim 6 is a relative term which renders the claim indefinite. The term "greater than about" is not defined by the claim, the

specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. In the specification does not indicate as to what range of specific activity is covered by "about" and the claim language "greater than about" is indefinite.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6 & 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coviello (USPN 5,124,903).

Regarding claims 1 & 2, Coviello discloses first candles (51), the first candle having a first expected burn time, and a second candle (52), the second candle having a second expected burn time, a third candles (53), the third candle having a third expected burn time.

It would have been obvious matter of design choice to change the size of the candle(s), since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have plurality of candles, since it has been held that

mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

Note: it is inherent that differently sized or shaped candles would have different burn time

Regarding claim 3, Coviello discloses the claimed invention, explained above. In addition, Coviello discloses a container (15) and wherein the first, second, and third candles are packaged together within the container may to be removed prior to lighting.

Regarding claim 4 & 5, Coviello discloses the claimed invention, except for the candles are either scented or floats. It would have been obvious matter of design variation to modify candles of Coviello, since applicant has not disclosed that the difference solves any stated problem or is for any particular purpose and it appears that the most of the candles are either scented or floats.

Note: scented candles are known in the art in illumination and it is inherent that most of the candles floats on water.

Regarding claim 6, Coviello discloses the claimed invention, and it is inherent that differently lengthened candles of Coviello would have burn time. It would have been obvious matter of design variation to modify candles of Coviello so that the first burn time less than about 60 minutes, the second burn time is greater than about 60 minutes and less than about 120 minutes, and the third burn time is greater than about 120 minutes, since applicant has not disclosed that the difference solves any stated problem or is for any particular purpose and it appears the invention would perform equally well.

Regarding claims 9-13 Coviello discloses the structural limitation as explained above (claims 1, 2, 3, 4, 5 & 6). In addition, it has been held that to be entitled to weight in method claims, the recited structure limitations therein must affect the method in a manipulative sense, and not to amount to the mere claiming of a use of particular structure. *Ex parte Pfeiffer*, 1962 C.D. 408 (1961).

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coviello (USPN 5,124,903) in view of Pekala et al. (USPN 6,092,932).

Regarding claim 7, Coviello discloses the claimed invention, explained above. In addition, Coviello discloses differently sized candles being packaged (Figure 1). Pekala et al. teaches that the container having a top end and a bottom end, the top end having a plurality of holes, a front side and a back side, a left side and a right side, a lighting element, and a fastener extending through the holes to secure the element to the container and closing the top end of the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use modification in Pekala et al., as taught by Coviello in order to package the plurality of candles with a gift bag.

Note: using reusable gift bag of Pekala et al. to package candles would have been obvious because it is understood that a gift may be a many different items and candle(s) is one of the item that may be used as a gift.

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Coviello (USPN 5,124,903) in view of Shaffer et al. (USPN 5,551,570).

Regarding claim 8, Coviello discloses the claimed invention, explained above. In addition, Coviello discloses differently sized candles being packaged. Shaffer et al. teaches that it is known to use a decorative packaging system with a lighting element (51) and a means for fastening the lighting element to the container. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use modification in Shaffer et al., as taught by Coviello in order to package the plurality of candles with a gift bag.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

James (USPN 5,660,281) – device for candle storage

Shaffer et al. (USPN 5,551,570) – decorative packaging system including a method and kit therefore

Patterson et al. (USPN 4,208,978) – display package for tapered candles

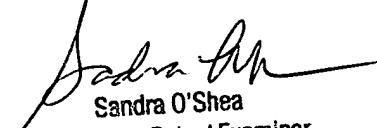
Grupe (USPN 5,121,835) – candle display package including a transparent mold/container

Wilkinson (USPN 4,643,307) – packing arrangement for articles of different size

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacob Y Choi whose telephone number is (703) 308-4792. The examiner can normally be reached on Monday-Friday (10:00-7:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sandra O'Shea can be reached on (703) 305-4939. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9318 for regular communications and (703) 872-9319 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-7724.



Sandra O'Shea
Supervisory Patent Examiner
Technology Center 2800

JC
October 17, 2002